

No. 93-1658-CR(C)

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ERRATA SHEET

STEVEN G. B.,

Defendant-Appellant.

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PLEASE TAKE NOTICE that the attached page 1 is to be substituted for page 1 in the above-captioned opinion which was released on July 31, 1996.

Dated this 12th day of December, 2006.

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SUNDBY, J. (*concurring*). I agree that the defendant received a fair trial and there was no trial court error. As difficult as it is for me to believe that there was sufficient evidence to convict the defendant beyond a reasonable doubt, there is no basis under the law upon which to set aside the jury verdict. See *State v. Poellinger*, 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). However, I urge the supreme court to accept review of this decision, if a petition is filed with the court, to re-examine its *per se* rule which excludes polygraph evidence without a stipulation. See *State v. Dean*, 103 Wis.2d 228, 307 N.W.2d 628 (1981).

The defendant alleges his counsel was ineffective for failing to move for admission of a polygraph examination which supported the defendant's claim of innocence. In view of *Dean*, trial counsel cannot be faulted for attempting to introduce evidence which the supreme court has ruled is inadmissible. I believe *Dean* needs to be re-examined.

Since 1981, commentators and some courts have recognized the increased reliability of polygraph evidence and have even suggested that to exclude such evidence violates the defendant's Sixth Amendment right to present evidence in his defense. Two law review articles exhaustively review the changing approach of the courts to polygraph evidence. A 1991 Kentucky Law Journal Note examines the decision of the Eleventh Federal Circuit Court of Appeals in *United States v. Piccinonna*, 885 F.2d 1529 (11th Cir. 1989) (*en banc*). W. Thomas Halbleib, *United*